IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO. 164 OF 1985

Jayantkumar & Bros. ... Plaintiffs

v/s

Indian National Press (Bombay) Ltd. ... Defendants

Mr. K.F. Merchant i/by Little & Co. for the plaintiffs.

Mr. Milind Vasudeo with Mr.C.N. Mani for the defendants.

CORAM: P.V. KAKADE, J.

DATED: 29TH OCT., 2004.

P.C.:

1. The plaintiffs have filed the suit for recovery of the sum of Rs.54,459.40 alongwith interest at the rate of 12% p.a. from the defendants towards the goods sold and supplied to them as per the bills/challans issued from time to time. The plaintiffs have raised 11 bills and delivery challans from time to time which are unpaid. The particulars of the said bills are found in Exh.B to the plaint which are at Exhs. P-4 to P-14 in evidence.

2. It is the case of the defendants that the goods received by them were short supplied and were not as per

the bills/challans. According to them, the supply has been 30% less than they had ordered. It is also the defendants' case that the plaintiffs' representative came to their office and stated that 30% goods were short delivered and hence the suit is sought to be dismissed with costs.

3. The issues were settled in the suit. The settled issues and my findings thereon are as under :-

(1) Whether the plaintiffs have proved that they had sold and delivered to the defendants timber goods as per their bills/challans ?

(2) Whether the plaintiffs have proved that they are entitled to claim and recover from the defendants any amount towards the price of timber goods sold to the defendants ?

(3) Whether the plaintiffs have further proved that they are entitled to claim any interest from the defendants ?

(4) What order ?

My findings on the issues are -

Issue No.1 :- Affirmative.

Issue No.2 :- Affirmative.

Issue No.3 :- Affirmative.

Issue No.4 :- As per final order.

4. At the outset, it may be noted that both the parties have led oral evidence. The plaintiffs have also relied heavily on their documentary evidence. The plaintiffs examined one Jayant Kumar Mehta, partner of the firm who stated in his examination-in-chief that they have supplied timber and other articles to the defendants of the aggregate value of Rs.1,54,607.85 out of which Rs.1,00,148.45 has been received leaving the balance of Rs.54,459.40 towards the goods supplied to the defendants for the said 11 bills. The plaintiffs have also stated that the defendants' representative has received the goods supplied to them and in token thereof has signed delivery challans issued by the plaintiffs. Said documentary evidence is at Exhs. P-4 to P-14 which shows the acknowledgement of the concerned person.

The defendants' case is that perusal of Exh.P-4 shows and clarifies that the number of pieces mentioned in the bill are 34, whereas the delivery challan attached to the said

bill refers to only 31 pieces. Similar are the objections sought to be raised pertaining to the quantities supplied to the defendants. However, it is significant to note that the documents are tallied with case of the plaintiffs showing the quantity which was supplied to the defendants and, therefore, question is not of number of pieces supplied to the defendants but the quantity which is to be measured in cubic meters which is found to be supplied.

5. The plaintiffs have further stated in the evidence that one Mr. Sen also told the plaintiffs' witness that if he does not accept the said amount offered by them to settle the dispute of Rs.30,000/-, it will take him 10 years to recover the said amount through the Court of law, which in fact held to be correct. It is further to be noted that the plaintiffs had moved the Company Petition No. 284 of 1984 in Company Court for winding upkl the Company, wherein the Company Court by order dated 5.3.1984 directed the defendants to deposit the amount of Rs.30,000/- and the direction was given to the plaintiffs to file the suit in appropriate Court on defendants' depositing the said amount. The said amount is deposited accordingly and consequent to that direction, the present suit appears to have been filed.

It appears that the defendants want to predicate the theory that their employee one Mr. Kumar, was in collusion with the plaintiffs, as a result of which the dispute arose. However, there is no evidence in that regard and, therefore, such theory cannot be accepted in law.

For the reasons recorded above, I have no doubt whatsoever that the plaintiffs have proved their claim and, therefore, the decree is required to be passed in that regard. Hence the following order :-

O R D E R

1. The suit is decree with costs.

2. The defendants shall pay Rs.69,878.73 to the plaintiffs with interest at the rate of 12% p.a. on Rs.54,459.40 ps. from thedate of the suit till realization.

3. The amount of Rs.30,000/- deposited by the defendants by virtue of Company Court order be adjusted from the decretal amount of the suit claim. The plaintiffs are

held entitled to withdraw the said amount, if not already withdrawn.

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